Rymer, Edwina

From: Leissner, Ray
Sent: Monday, March 17, 2014 9:45 AM
To: Dellinger, Philip;Frazier, Mike
Subject: RE: Inside EPA - CCS Class VI concerns

Geesh. Who wrote this? Why does EPA find it necessary to kick the bear? Kick the bear and you get what you deserve. EPA is working hard to lose the UIC program it seems. This could do it. DOE will not kick the bear.

Lets chase this out.

Some EPA DI Class VI director determines that a state primacy Class II CO2 ER project is no longer viable and the operator has to get a Class VI permit for each of his wells…… Or what? Someone needs to revisit the authority bestowed on a guidance. I note that Louisiana is not on the list of concerned states.

From: Dellinger, Philip
Sent: Monday, March 17, 2014 7:42 AM
To: Leissner, Ray; Frazier, Mike
Subject: FW: Inside EPA - CCS Class VI concerns

Leslie Savage has been pretty vocal on this concern at GWPC meetings.

From: Lawrence, Rob
Sent: Friday, March 14, 2014 11:03 AM
To: Dellinger, Philip; Graves, Brian; Overbay, Michael
Subject: Inside EPA - CCS Class VI concerns

States Fear CCS Guide Allows Unlawful EPA Preemption Of UIC Permits

Posted: March 13, 2014

State attorneys general (AGs) fear EPA's draft guide on permitting "Class VI" underground injection control (UIC) wells to store carbon dioxide (CO2) may allow the agency to "unlawfully" preempt states' control over oil wells and force them to obtain strict Class VI permits -- even as EPA appears poised to delegate the first Class VI program to a state, a move that could limit preemption.

"The draft guidance has introduced confusion and uncertainty into the oil and gas industry and failed to resolve the business community's outstanding issues with the UIC program," says a Feb. 28 letter to EPA from the state AGs of Oklahoma, Texas, Wyoming, Alabama, Michigan, Nebraska and South Carolina. The threat of Class VI preemption "unlawfully interferes with the authority granted to States under the UIC program," they say.

EPA's guidance describes a process through which existing "Class II" UIC wells used by the oil industry would need to obtain more stringent Class VI permits that require more detailed geologic analysis, longer-lasting materials and more rigorous monitoring and reporting requirements. The agency says that when a Class II well is no longer primarily producing oil but is instead being used to store carbon dioxide, it would need to be reclassified as a Class VI well.

EPA created the Class VI category in 2010 aiming to protect underground sources of drinking water (USDW) from contamination risks posed by the geologic sequestration of CO2. The role of underground storage of CO2 has growing importance due to the agency's recently proposed climate new source performance standards (NSPS) for new coal-fired power plants that requires the installation of partial carbon capture and storage (CCS).

The AGs say that the draft guidance implies that the director of a Class VI UIC program can preempt the director of a Class II UIC program and require that an existing oil drilling well already permitted under Class II obtain a significantly more stringent Class VI permit, if the well is used primarily for CO2 storage.

Many states have delegated authority, known as "primacy," for permitting Class II wells but no state currently has primacy for Class VI wells, for which EPA retains permitting power. Therefore, the AGs fear that an EPA regional official could cite the guidance to force a state Class II director to change a well to Class VI.

"This is not lawful," they write, as a directive to force a redesignation of a well would effectively preempt delegated Class II authority. "Allowing the Class VI Director to 'second guess' the Class II Director and intervene seemingly on a whim violates EPA's own rules regarding state primacy and flagrantly impinges upon state authority. EPA cannot revoke a state's primacy unless it can show a failure to comply with applicable requirements."

Though EPA created the geologic sequestration category more than three years ago, the agency has yet to issue any Class VI permits or to delegate another state to administer the program. Even so, industry groups and states have recently raised alarms on the draft guidance document because of its potential intersection with Class II wells used by drillers for decades when they inject carbon dioxide into oil formations for enhanced oil recovery (EOR).

The AGs say the guidance "erroneously" implies that a Class VI director -- currently EPA -- could "on his or her own volition" preempt the states and require the Class II permit holder to reclassify as Class VI.

They add that the guidance could expose an existing Class II permit holder to "seemingly unbounded risks" of having to apply for reclassification to Class VI, which they say is "utterly and entirely beyond the bounds of EPA authority and carries the very real possibility of doing harm to our nation's energy infrastructure." The comments request that EPA take "immediate action to rectify" the situation created by the draft guidance.

An industry attorney says the concern is that "since EPA is the only Class VI decision-maker in all 50 states, you have the issue of EPA trying to get into the shorts of the states where the states have really been the decision maker."

Some Republicans share the concerns about the guidance, with GOP lawmakers at a March 12 House science committee hearing warning the guidance and the agency's utility NSPS could harm the EOR industry by creating new regulatory burdens.

Pending Primacy

The concerns about EPA potentially using its Class VI oversight to preempt state Class II directors comes as the agency readies approval of the first-in-the-nation delegation of Class VI authority to a state.

According to the agency's "Action Initiation List" of rulemakings launched in December -- posted on EPA's website this month -- within 12 months it will issue a direct final rule approving North Dakota' request to be the first state with authority to administer its Class VI program, potentially setting a precedent for how other states can win the delegation.

North Dakota has been the main state trying to obtain delegated Class VI authority, with the state working closely with the agency in recent years on its application to administer the program. The industry attorney said that many have felt the application process for the state has "taken way too long, it's been way too complicated."

The attorney says it is "good news that EPA is doing this because North Dakota has been at this for a long time" and says that the agency by moving forward on the application "to a certain degree is dispelling" questions by states and industry about whether the agency would ever delegate authority for Class VI to states. But, he adds, "I think states will have to look at this process North Dakota has gone through and say, 'Is it worth the effort?'"

The approval of North Dakota's Class VI program isn't going to take effect immediately. EPA in the action initiation list, which covers the month of December but was only posted online March 13, says that it plans to within "12 months or less" issue a rule approving North Dakota's application to administer the Class VI program.

The agency says it plans to issue the approval through a direct final rule that would not go through typical notice-and-comment rulemaking procedures -- EPA says it views the approval as a "noncontroversial action" -- but the agency also plans to issue a parallel proposal that would take effect if the agency receives "adverse comments."

But though EPA's pending approval of North Dakota's request to administer the Class VI program could pave the way for other states on primacy, it is unlikely to resolve the fears from energy-producing states that worry that the draft guidance could allow EPA to interfere with states' existing authority under the UIC program.

NSPS Concerns

Meanwhile, other groups are raising concerns about how the agency's utility NSPS for coal-fired utilities that would require partial CCS could lead to unintentional environmental problems.

The American Water Works Association (AWWA) in a March 12 letter to the House Science, Space and Technology Committee says that though it has not taken a position on the utility NSPS, it notes that there is relatively little experience with the types of large-scale CCS that might occur under the rule."Therefore, it should be considered an experimental technology and could pose significant risks to drinking water sources if rushed prematurely to commercial scale," AWWA says.

The drinking water community and citizens "are being asked to 'trust' that geologic sequestration technology will work as promised, even though there is very little if any experience with this technology at a large scale," the group says, asking EPA to ensure that the benefits of CCS are weighed against the unintended consequences on water quality.

The group fears the "risk of unintended consequences from geologic sequestration is high," and that it is possible that CCS "could make large amounts of USDW permanently unsuitable for use as community water supply."

Although it says it is not suggesting that CCS cannot or should not go forward, it warns the technology has not been widely tested, and notes that EPA has yet to issue a "single Class VI UIC permit."

Outside of the concerns about the Class VI wells and the transition documents, industry groups continue to voice concerns that new "subpart RR" reporting requirements included as part of the utility NSPS could cause the oil sector to refuse to purchase or accept carbon dioxide emissions captured by new coal-fired power plants.

Denbury Resources, an oil company with a significant number of EOR wells, says in undated comments that EOR operators will avoid purchasing carbon dioxide subject to the more stringent "subpart RR" rules to avoid their uncertainty and risks, which would create a result contrary to EPA's intent for utilities to sell the carbon dioxide it captures off to existing EOR operations.

The company says that in addition to subpart RR turning EOR operations from a "resource recovery operation into a waste disposal operation" because it says the rules are premised on a "waste disposal" model, the rule will also require the creation of a monitoring, reporting and violation (MRV) plan that would become a vehicle for litigation, as if they failed to follow the MRV plan, they say operators could be subject to EPA enforcement action under the Clean Air Act. -- *Chris Knight* (cknight@iwpnews.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

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